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Paper No. 24

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JUN 04 2004

DIRECTOR OFFICE
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DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

In re Application of
Peter O. Schmidt, et al.
Application No. 09/801,442
Filed: March 7, 2001
For: ELECTRONIC DEVICE UTILIZING
AN EARPLUG SUPPORT ELEMENT AND
METHOD FOR PROVIDING THE SAME

This is a decision on the petition to revive filed April 19, 2004 which is treated as a Petition to Withdraw Holding of Abandonment pursuant to 37 C.F.R. § 1.181(a). No fee is required.

The application was abandoned for failure to respond in a timely and effective manner to the non-final Office action mailed March 18, 2003. A Notice of Abandonment has not been mailed.

Petitioner asserts that a proper response was timely filed. In support of the petition, Petitioner has submitted, a copy of Applicant's reply and a date-stamped post card receipt evidencing receipt of the response within the United States Patent & Trademark Office on May 12, 2003.

The original correspondence filed was not matched with the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the U.S.PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the response was timely filed in the Patent and Trademark Office but not matched with the application file.

In view of the above stated reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file will be forwarded TC2600's Technical Support Staff for entry of the reply; thereafter it will be forwarded to the examiner for consideration of the response in appropriate turn.

It is noted that the IDS dated September 26, 2003 was received by the Office on September 29, 2003 and has been placed in the application file.

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